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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,184	06/30/2006	Una Tucker	2204884-120US1	1165
23483	7590	09/30/2010	EXAMINER	
WILMERHALLE/BOSTON			MATTER, KRISTEN CLARETTE	
60 STATE STREET			ART UNIT	PAPER NUMBER
BOSTON, MA 02109			3771	
NOTIFICATION DATE		DELIVERY MODE		
09/30/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/585,184	<b>Applicant(s)</b> TUCKER, UNA
	<b>Examiner</b> KRISTEN C. MATTER	<b>Art Unit</b> 3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 07 September 2010.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 12-31 is/are pending in the application.

4a) Of the above claim(s) 12-26 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 27-31 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

This Action is in response to the amendment filed 9/7/2010. Claims 1-11 were cancelled and claims 27-31 were added (no claims were amended). Thus, claims 27-31 have been examined on their merits in this Action.

#### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in the United Kingdom on 12/30/2003. It is noted, however, that applicant has not filed a certified copy of the 0330185.0 application as required by 35 U.S.C. 119(b).

Examiner notes that certified copies of application numbers 0406612.2, 0406613.0, 0406614.8, and 040264634, all filed in the United Kingdom, have been received and placed of record in the file.

#### ***Claim Objections***

Claims 28, 30, and 31 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 28 and 30 claim "finger rings." However, fingers rings were already claimed in both independent claims 27 and 29 in line 4. Likewise, the "finger holes" of claim 31 seem to be directed to the same structure as the finger rings.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 31 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 31 recites the limitation of “the finger holes” in line 1. However, finger holes have not been previously introduced in the claim, creating an antecedent basis issue. In addition, as discussed above, the finger holes appear to be the same structure as the finger rings (only in a different embodiment) and thus it is confusing as to whether the device has both finger rings (as required by claim 27) and finger holes (as required by claim 31). Examiner notes that such an embodiment does not seem to be supported by the specification.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 27, 28, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over McNair (US D233,703) in view of York (US 6,241,696) and Ferrier (US 2,806,470).**

Regarding claims 27, 28, and 31, McNair discloses a hand-held self-contained massaging device for body massage, the device comprising: a lower portion forming a hand grip (i.e., the

top portion seen in Figure 3) that bottom part of the hand grip being convex (see Figure 3); an upper portion forming a unitary arched dome structure (i.e., the bottom part seem in Figure 3) connected to the upper surface of the hand grip, wherein the arched dome member is gradually arched yet sufficiently flattened in nature so as to permit maximum contact with the body receiving the massage from the device (see Figures 2 and 3); and rounded side portions (see Figures 2 and 3) located at each end of the arched dome member; wherein the overall shape of the massaging device is of generally isosceles trapezoid shape (see Figure 3).

From the figures of McNair it appears as though the arched dome member is slightly longer than the hand grip (i.e., the slot where fingers are inserted). However, to the extent that the length is unclear and not verbally discussed in McNair, examiner cites York as teaching a similar hand-held massager that has a lower portion hand grip (3) and an upper portion arched dome member (1a), the arched dome member having a longer length than the hand grip (see Figure 2) and having a generally isosceles trapezoid shape overall. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the dimensions of McNair to have an arched dome member that is longer than the hand grip as taught by York in order to provide a larger massage surface area. Such a modification would appear to involve a mere change in dimension that does not patentably distinguish an invention over the prior art.

McNair lacks finger rings/holes (i.e., McNair discloses a single slot for fingers). However, finger rings are well known in the art for allowing a user to grasp a manual massaging instrument as demonstrated by Ferrier (see Figure 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have replaced the finger slot

of McNair with finger rings as taught by Ferrier in order to provide a better gripping area that would also help more with lateral pressure. Such a modification appears to involve the mere substitution of one well known finger grip means for another to produce predictable results that do not patentably distinguish an invention over the prior art.

**Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over McNair (US D233,703) in view of York (US 6,241,696), Ferrier (US 2,806,470), and Back (US D408,543).**

Regarding claims 29 and 30, McNair discloses a hand-held self-contained massaging device for body massage, the device comprising: a lower portion forming a hand grip (i.e., the top portion seen in Figure 3); an upper portion forming a unitary arched dome structure (i.e., the bottom part seen in Figure 3) connected to the upper surface of the hand grip, wherein the arched dome member is gradually arched yet sufficiently flattened in nature so as to permit maximum contact with the body receiving the massage from the device (see Figures 2 and 3); and rounded side portions (see Figures 2 and 3) located at each end of the arched dome member; wherein the overall shape of the massaging device is of generally isosceles trapezoid shape (see Figure 3).

From the figures of McNair it appears as though the arched dome member is slightly longer than the hand grip (i.e., the slot where fingers are inserted). However, to the extent that the length is unclear and not verbally discussed in McNair, examiner cites York as teaching a similar hand-held massager that has a lower portion hand grip (3) and an upper portion arched dome member (1a), the arched dome member having a longer length than the hand grip (see

Figure 2) and having a generally isosceles trapezoid shape overall. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the dimensions of McNair to have an arched dome member that is longer than the hand grip as taught by York in order to provide a larger massage surface area. Such a modification would appear to involve a mere change in dimension that does not patentably distinguish an invention over the prior art.

McNair lacks finger rings/holes (i.e., McNair discloses a single slot for fingers). However, finger rings are well known in the art for allowing a user to grasp a manual massaging instrument as demonstrated by Ferrier (see Figure 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have replaced the finger slot of McNair with finger rings as taught by Ferrier in order to provide a better gripping area that would also help more with lateral pressure. Such a modification appears to involve the mere substitution of one well known finger grip means for another to produce predictable results that do not patentably distinguish an invention over the prior art.

The bottom part of the hand grip of McNair is convex and thus McNair lacks a concave bottom part. However, Back discloses a hand-held massager with a hand grip having a concave bottom part (see Figure 7). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the bottom part of McNair's hand grip concave as taught by Back in order to increase comfort for a user pushing on the grip, for example.

***Response to Arguments***

Applicant's arguments with respect to claims 27-31 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTEN C. MATTER whose telephone number is (571)272-5270. The examiner can normally be reached on Monday - Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven O. Douglas/  
Primary Examiner, Art Unit 3771

/Kristen C. Matter/  
Examiner, Art Unit 3771